

# **EXHIBIT 1**

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Attorneys for Plaintiffs ABBOTT DIABETES  
CARE INC. and ABBOTT LABORATORIES

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

ABBOTT DIABETES CARE INC. and  
ABBOTT LABORATORIES,

Plaintiffs,

vs.

AGAMATRIX, INC.,

Defendant.

CASE NO. C 06 07268-JF

**PLAINTIFFS' FIRST AMENDED  
COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Abbott Diabetes Care Inc. ("ADC"), formerly known as TheraSense,  
2 Inc., and Abbott Laboratories ("Abbott") bring this action for patent infringement against  
3 defendant AgaMatrix, Inc. ("Agamatrix"), and each alleges upon personal knowledge with  
4 respect to itself and its own acts, and upon information and belief with respect to all other matters,  
5 as follows:

### 6 THE PARTIES

7  
8 1. ADC is a Delaware corporation with its principal place of business in Alameda,  
9 California. ADC is a worldwide leader in the development, manufacture and marketing of blood  
10 glucose self-monitoring systems. The ADC systems feature very small sample size, rapid test  
11 results, and less painful testing systems for people with diabetes.

12  
13 2. Abbott is an Illinois corporation that maintains its principal offices and research  
14 facilities in Abbott Park, Illinois. ADC is a wholly-owned subsidiary of Abbott. Abbott is a  
15 worldwide leader in the area of pharmaceutical products and medical devices.

16  
17 3. ADC and Abbott (collectively "Plaintiffs") are informed and believe, and on that  
18 basis allege, that Defendant Agamatrix is a Delaware corporation with its principal place of  
19 business in Salem, New Hampshire. Agamatrix may be served with process by serving its  
20 registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street,  
21 Wilmington, Delaware, 19801, (302) 658-7581.

### 22 JURISDICTION

23  
24 4. This Court has subject matter jurisdiction over this action pursuant to  
25 28 U.S.C. §§ 1331 and 1338, in that this is a civil action for patent infringement arising under the  
26 Patent Laws of the United States, Title 35, United States Code. This Court has personal  
27 jurisdiction over Agamatrix because Agamatrix regularly conducts business in this District and  
28 has committed acts of patent infringement in this District.

1 VENUE

2 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b)  
3 because Agamatrix is subject to personal jurisdiction in this District and Agamatrix has  
4 committed acts of patent infringement and regularly does business in this District.  
5

6 INTRADISTRICT ASSIGNMENT

7 6. This is a patent infringement suit. Accordingly, pursuant to Civil L.R. 3-2(c), this  
8 case may be assigned to any division within the District.

9 FACTUAL BACKGROUND

10 7. Masao Gotoh, Hiroki Mure, and Hiroshi Shirakawa are the inventors of U.S.  
11 Patent No. 6,071,391 (the “391 Patent”) entitled “Enzyme Electrode Structure,” attached as  
12 Exhibit A; U.S. Patent No. 6,156,173 (the “173 Patent”) entitled “Enzyme Electrode Structure,”  
13 attached as Exhibit B; U.S. Patent No. 6,503,381 (the “381 Patent”) entitled “Biosensor,”  
14 attached as Exhibit C; and U.S. Patent No. 6,893,545 (the “545 Patent”) entitled “Biosensor,”  
15 attached as Exhibit D. These patents are directed to glucose test strips and meters and the use  
16 thereof.  
17

18 8. Benjamin J. Feldman, Adam Heller, Ephraim Heller, Fei Mao, Joseph A. Vivolo,  
19 Jeffrey V. Funderburk, Fredric C. Coleman, and Rajesh Krishnan are the inventors of U.S. Patent  
20 No. 6,338,790 (the “790 Patent”), entitled “Small Volume In Vitro Analyte Sensor With  
21 Diffusible or Non-Leachable Redox Mediator,” attached as Exhibit F. This patent is directed to  
22 glucose test strips and meters and the use thereof.  
23

24 9. Adam Heller, Benjamin J. Feldman, James Say, and Mark S. Vreeke are the  
25 inventors of U.S. Patent No. 6,143,164 (the “164 Patent”), entitled “Small Volume In Vitro  
26 Analyte Sensor,” attached hereto as Exhibit G. This patent is directed to glucose test strips and  
27 meters and the use thereof.  
28



1 submitted for recordation with the U.S. Patent and Trademark Office. A true and correct copy is  
2 attached hereto as Exhibit E.

3 16. The '391 Patent has been in full force and effect since its issuance. Plaintiffs own  
4 the entire right, title, and interest in and to the '391 Patent, including the right to sue for past,  
5 present, and future infringements thereof.

6 17. Agamatrix has engaged in one or more acts that constitute infringement of the '391  
7 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell,  
8 use, and importation of the above-described glucose strips and meters.

9 18. Agamatrix's activities have been without express, or implied, license by Plaintiffs.

10 19. On information and belief, Agamatrix knew of and willfully and deliberately  
11 infringed the '391 Patent.

12 20. As a result of Agamatrix's infringing conduct, Plaintiffs have suffered irreparable  
13 injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury  
14 unless Agamatrix's infringement of the '391 Patent is enjoined.

15 21. Plaintiffs have been damaged, and will be further damaged, as a result of  
16 Agamatrix's infringement of the '391 patent and are entitled to be compensated for such damages  
17 in an amount not yet determinable, but which will be determined at trial.

## 18 **SECOND CAUSE OF ACTION**

### 19 **(Patent Infringement – United States Patent No. 6,156,173)**

20 22. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs as  
21 though fully set forth herein.

22 23. On December 5, 2000, the PTO duly issued to Masao Gotoh, Hiroki Mure, and  
23 Hiroshi Shirakawa the '173 Patent, entitled "Enzyme Electrode Structure," a true and correct  
24

1 copy of which is attached hereto as Exhibit B. Messrs. Gotoh et al. assigned the '173 Patent to  
2 NOK Corporation, which then assigned the patent to TheraSense, Inc. As the successor in  
3 interest to TheraSense, Inc., ADC is the assignee of the '173 Patent. A document reflecting the  
4 change of name of the assignee from TheraSense, Inc. to ADC has been submitted for recordation  
5 with the U.S. Patent and Trademark Office. Exhibit E.

6  
7 24. The '173 Patent has been in full force and effect since its issuance. Plaintiffs own  
8 the entire right, title, and interest in and to the '173 Patent, including the right to sue for past,  
9 present, and future infringements thereof.

10 25. Agamatrix has engaged in one or more acts that constitute infringement of the '173  
11 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell,  
12 use, and importation of the above-described glucose strips and meters.

13  
14 26. Agamatrix's activities have been without express, or implied, license by Plaintiffs.

15 27. On information and belief, Agamatrix knew of and willfully and deliberately  
16 infringed the '173 Patent.

17 28. As a result of Agamatrix's infringing conduct, Plaintiffs have suffered irreparable  
18 injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury  
19 unless Agamatrix's infringement of the '173 Patent is enjoined.

20  
21 29. Plaintiffs have been damaged, and will be further damaged, as a result of  
22 Agamatrix's infringement of the '173 patent, and are entitled to be compensated for such  
23 damages in an amount not yet determinable, but which will be determined at trial.

24 **THIRD CAUSE OF ACTION**

25 **(Patent Infringement – United States Patent No. 6,503,381)**

26 30. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs as  
27 though fully set forth herein.  
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1           31. On January 7, 2003, the PTO duly issued to Masao Gotoh, Hiroki Mure, and  
2 Hiroshi Shirakawa the '381 Patent, entitled "Biosensor," a true and correct copy of which is  
3 attached hereto as Exhibit C. Messrs. Gotoh et al. assigned the '381 Patent to NOK Corporation,  
4 which then assigned the patent to TheraSense, Inc. As the successor in interest to TheraSense,  
5 Inc., ADC is the assignee of the '381 Patent. A document reflecting the change of name of the  
6 assignee from TheraSense, Inc. to ADC has been submitted for recordation with the U.S. Patent  
7 and Trademark Office. Exhibit E.

9           32. The '381 Patent has been in full force and effect since its issuance. Plaintiffs own  
10 the entire right, title, and interest in and to the '381 Patent, including the right to sue for past,  
11 present, and future infringements thereof.

12           33. Agamatrix has engaged in one or more acts that constitute infringement of the '381  
13 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell,  
14 use, and importation of the above-described glucose strips and meters.

15           34. Agamatrix's activities have been without express, or implied, license by Plaintiffs.

16           35. On information and belief, Agamatrix knew of and willfully and deliberately  
17 infringed the '381 Patent.

18           36. As a result of Agamatrix's infringing conduct, Plaintiffs have suffered irreparable  
19 injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury  
20 unless Agamatrix's infringement of the '381 Patent is enjoined.

21           37. Plaintiffs have been damaged, and will be further damaged, as a result of  
22 Agamatrix's infringement of the '381 patent, and are entitled to be compensated for such  
23 damages in an amount not yet determinable, but which will be determined at trial.  
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**FOURTH CAUSE OF ACTION**

**(Patent Infringement – United States Patent No. 6,893,545)**

38. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs as though fully set forth herein.

39. On May 17, 2005, the Patent and Trademark Office (the “PTO”) duly issued to Masao Gotoh, Hiroki Mure, and Hiroshi Shirakawa the ‘545 Patent, entitled “Biosensor,” a true and correct copy of which is attached hereto as Exhibit D. Messrs. Gotoh et al. assigned the ‘545 Patent to NOK Corporation, which then assigned the patent to TheraSense, Inc. As the successor in interest to TheraSense, Inc., ADC is the assignee of the ‘545 Patent. A document reflecting the change of name of the assignee from TheraSense, Inc. to ADC has submitted for recordation with the U.S. Patent and Trademark Office. Exhibit E.

40. The ‘545 Patent has been in full force and effect since its issuance. Plaintiffs own the entire right, title, and interest in and to the ‘545 Patent, including the right to sue for past, present, and future infringements thereof.

41. Agamatrix has engaged in one or more acts that constitute infringement of the ‘545 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell, use, and importation of the above-described glucose strips and meters.

42. Agamatrix’s activities have been without express, or implied, license by Plaintiffs.

43. On information and belief, Agamatrix knew of and willfully and deliberately infringed the ‘545 Patent.

44. As a result of Agamatrix’s infringing conduct, Plaintiffs have suffered irreparable injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury unless Agamatrix’s infringement of the ‘545 Patent is enjoined.

**(Patent Infringement – United States Patent No. 6,338,790)**

47. On January 15, 2002, the Patent and Trademark Office (the "PTO") duly issued to Benjamin J. Feldman, Adam Heller, Ephraim Heller, Fei Mao, Joseph A. Vivolo, Jeffrey V. Funderburk, Fredric C. Coleman, and Rajesh Krishnan, the '790 Patent, entitled "Small Volume In Vitro Analyte Sensor With Diffusible or Non-Leachable Redox Mediator," a true and correct copy of which is attached hereto as Exhibit F. Messrs. Feldman et al. assigned the '790 Patent to TheraSense, Inc. As the successor in interest to TheraSense, Inc., ADC is the assignee of the '790 Patent. A document reflecting the change of name of the assignee from TheraSense, Inc. to ADC has been recorded with the U.S. Patent and Trademark Office at Reel 019440/Frame 0877.

49. Agamatrix has engaged in one or more acts that constitute infringement of the '790 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell, use, and importation of the above-described glucose strips and meters.

51. On information and belief, Agamatrix knew of and willfully and deliberately infringed the '790 Patent.



1           58.     Agamatrix's activities have been without express, or implied, license by Plaintiffs.

2           59.     On information and belief, Agamatrix knew of and willfully and deliberately  
3 infringed the '164 Patent.

4           60.     As a result of Agamatrix's infringing conduct, Plaintiffs have suffered irreparable  
5 injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury  
6 unless Agamatrix's infringement of the '164 Patent is enjoined.

7  
8           61.     Plaintiffs have been damaged, and will be further damaged, as a result of  
9 Agamatrix's infringement of the '164 patent, and are entitled to be compensated for such  
10 damages in an amount not yet determinable, but which will be determined at trial.

11                               **SEVENTH CAUSE OF ACTION**

12                               **(Patent Infringement – United States Patent No. 5,820,551)**

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14           62.     Plaintiffs incorporate the allegations set forth in the foregoing paragraphs as  
15 though fully set forth herein.

16           63.     On October 13, 1998, the Patent and Trademark Office (the "PTO") duly issued to  
17 Hugh Allen Oliver Hill, Irving John Higgins, James Michael McCann, and Graham Davis the  
18 '551 Patent, entitled "Strip Electrode With Screen Printing," a true and correct copy of which is  
19 attached hereto as Exhibit H. Messrs. Hill et al. assigned the '551 Patent to Medisense, which  
20 then assigned the patent to Abbott Laboratories.

21  
22           64.     The '551 Patent has been in full force and effect since its issuance. Plaintiffs own  
23 the entire right, title, and interest in and to the '551 Patent, including the right to sue for past,  
24 present, and future infringements thereof.

25           65.     Agamatrix has engaged in one or more acts that constitute infringement of the '551  
26 Patent within the meaning of 35 U.S.C. § 271, including, but not limited to, the sale, offer to sell,  
27 use, and importation of the above-described glucose strips and meters.  
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66. Agamatrix's activities have been without express, or implied, license by Plaintiffs.

67. On information and belief, Agamatrix knew of and willfully and deliberately infringed the '551 Patent.

68. As a result of Agamatrix's infringing conduct, Plaintiffs have suffered irreparable injury for which there is no adequate remedy at law. Plaintiffs will continue to suffer such injury unless Agamatrix's infringement of the '551 Patent is enjoined.

69. Plaintiffs have been damaged, and will be further damaged, as a result of Agamatrix's infringement of the '551 patent, and are entitled to be compensated for such damages in an amount not yet determinable, but which will be determined at trial.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court enter judgment in its favor and against Agamatrix and grant the following relief:

A. A judgment that Agamatrix has infringed the '391 Patent in violation of 35 U.S.C. § 271;

B. A judgment that Agamatrix has infringed the '173 Patent in violation of 35 U.S.C. § 271;

C. A judgment that Agamatrix has infringed the '381 Patent in violation of 35 U.S.C. § 271;

D. A judgment that Agamatrix has infringed the '545 Patent in violation of 35 U.S.C. § 271;

E. A judgment that Agamatrix has infringed the '790 Patent in violation of 35 U.S.C. § 271;

F. A judgment that Agamatrix has infringed the '164 Patent in violation of 35 U.S.C. § 271;

1 G. A judgment that Agamatrix has infringed the '551 Patent in violation of 35  
2 U.S.C. § 271;

3 H. A judgment that Agamatrix's infringement of the '391, '173, '381, '545,  
4 '790, '164, and '551 Patents has been willful and deliberate;

5 I. A preliminary and permanent injunction, pursuant to 35 U.S.C. § 283,  
6 enjoining Agamatrix, and all persons in active concert or participation with them, from any  
7 further acts of infringement of the '391, '173, '381, '545, '790, '164, and '551 Patents;

8 J. An order, pursuant to 35 U.S.C. § 284, awarding Plaintiffs damages  
9 adequate to compensate Plaintiffs for Agamatrix's infringement of the '391, '173, '381, '545,  
10 '790, '164, and '551 Patents, in an amount to be determined at trial, but in no event less than a  
11 reasonable royalty;

12 K. An order, pursuant to 35 U.S.C. § 284, and based on Agamatrix's willful  
13 and deliberate infringements of the '391, '173, '381, '545, '790, '164, and '551 Patents, trebling  
14 all damages awarded to Plaintiffs;

15 L. An order, pursuant to 35 U.S.C. § 284, awarding to Plaintiffs interest on  
16 the damages and costs incurred in this action;

17 M. An order, pursuant to 35 U.S.C. § 285, finding that this is an exceptional  
18 case and awarding to Plaintiffs any reasonable attorneys' fees incurred in this action; and

19 N. Such other and further relief as this Court may deem just and proper.

20  
21 **JURY DEMAND**

22 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh  
23 Amendment of the Constitution of the United States, Plaintiffs ADC and Abbott demand a trial  
24 by jury of all claims and issues triable as of right by jury in this action.  
25  
26  
27  
28

DATED: July 9, 2007

Respectfully submitted,

BAKER BOTTS, LLP

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Attorneys for Plaintiffs

ABBOTT DIABETES CARE INC. and

ABBOTT LABORATORIES

**Certificate of Service**

I certify that a copy of the foregoing was served on the following counsel for  
Defendant AgaMatrix via U.S. mail and electronic mail:

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I certify under the penalty of perjury that the foregoing is true and correct.

Executed on July 9, 2007 in Austin, Texas.

By: 